

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the

M I D D L E D I S T R I C T O F P E N N S Y L V A N I A

Darian Renard Tensley*Petitioner*

v.

U.S. Bureau of Prisons; U.S.P.
Allenwood; Warden Oddo; Jane
or John Doe.*Respondent**(name of warden or authorized person having custody of petitioner)*Case No. 3:15-CV-1425
*(Supplied by Clerk of Court)***FILED**
HARRISBURG, PA

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241 JUL 23 2015

Personal Information

MARIA E. ELKINS, CLERK

Per 1. (a) Your full name: Darian Renard Tensley(b) Other names you have used: Drac

2. Place of confinement:

(a) Name of institution: U.S.P. Allenwood(b) Address: P.O. Box - 3000; White Deer PA 17887(c) Your identification number: # 41138-018

3. Are you currently being held on orders by:

☒ Federal authorities☐ State authorities☐ Other - explain:

4. Are you currently:

☐ A pretrial detainee (waiting for trial on criminal charges)☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

(a) Name and location of court that sentenced you: United States District
Court, Middle District of Florida(b) Docket number of criminal case: 8:03-CR-277-T-23TBM(c) Date of sentencing: February 9, 2004☐ Being held on an immigration charge☒ Other (explain): Petitioner is now being held in violation of the Con-
stitution and Laws of the United States as a result of an uncon-
stitutional career offender penalty.

Decision or Action You Are Challenging

5. What are you challenging in this petition:

☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

☐ Pretrial detention

☐ Immigration detention

☐ Detainer

☒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)

☐ Disciplinary proceedings

☒ Other (explain): The execution of the career offender penalty part of
Petitioner's sentence is unconstitutional. But for such execution
Petitioner would be at liberty.

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: United States Bureau of Prisons
U.S.P. Allenwood; P.O. Box 3000; White Deer PA, 17887

(b) Docket number, case number, or opinion number: N/A

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

Whether the respondent, Bureau of Prisons, and it's liaison,
U.S.P. Allenwood should be ordered to discharge Darian Renard
Tensley on the grounds of actual innocence.

(d) Date of the decision or action: N/A

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes

☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not appeal: That matter just recently
became relevant pursuant to Johnson v. United States, No. 13-7120
(June 26, 2015).

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: _____

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: _____

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☒ Yes ☐ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☒ Yes ☐ No

If "Yes," provide:

(1) Name of court: U.S. District Court, Middle District of Florida

(2) Case number: 8:08CV293

(3) Date of filing: September 28, 2007

(4) Result: Denied

(5) Date of result: September 18, 2008

(6) Issues raised: Ineffective Assistance of Counsel

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: § 2255 is inadequate or ineffective to test the legality of sentence because (1) Tensley claims actual innocence of being a career criminal; and (2) he has not had an unobstructive procedural shot at presenting the instant claim.

Please see attached Memorandum Section I."Jurisdiction."

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes

☐ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
- (b) Date of the removal or reinstatement order: _____
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☐ No

If "Yes," provide:

- (1) Date of filing: _____
- (2) Case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Issues raised: _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☐ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Date of filing: _____
- (3) Case number: _____

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(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. Other appeals

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes☐ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: On the grounds of actual innocence, Petitioner, Darian
Renard Tensley should be discharged by writ of habeas corpus.

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(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Please see attached Memorandum

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes

☒ No

GROUND TWO: Reserved for Amendment

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☐ No

GROUND THREE: Reserved for Amendment

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☐ No

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GROUND FOUR: Reserved for Amendment

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Petitioner prays the court find that he is not a career offender, in light of the recent holding in Johnson, and order the respondent to either show cause why the writ should not be GRANTED or alternatively, discharge him by writ of habeas corpus.

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

7/20/2015 ~~08~~ -41138-018

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 7/20/2015

~~08~~ -41138-018

Signature of Petitioner

Signature of Attorney or other authorized person, if any

Darion Tenney-41138-018
United States Penitentiary Allenwood
P.O. Box 3000
White Deer, PA 17887

RECEIVED
HARRISBURG, PA

JUL 23 2015

MARIA E. ELKINS, CLERK

Per

JUL 20 2015

MAILED FROM
U.S. PENITENTIARY

↔41138-018↔
Ronald Reagan Fed
228 Walnut
Harrisburg, PA 1710
United States